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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/892,727	06/27/2001	Scott Swix	60027.0018US01/BS01040	4789

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EXAMINER	
TRAN, HAI V	
ART UNIT	PAPER NUMBER
2623	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/19/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	09/892,727	SWIX ET AL.	
	Examiner	Art Unit	
	Hai Tran	2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 January 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-36* is/are pending in the application.

4a) Of the above claim(s) *3,11 and 23* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,4-10,12-22 and 24-36* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *2/20/07*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 1, 2, 4-10, 12-22 and 24-35 have been considered but are moot in view of the new ground(s) of rejection.

Claim 15, in response to Applicant's request of evidence that ADSL is "well-known" in the art, the Examiner cites Litteral et al. (US 5247347) and Beveridge (US 5440335) to support. As such, the Examiner maintains the Official Notice taken.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 1, 2, 4-10, 12-22 and 24-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Middeke et al. (US 6445907) in view of Herrbach et al. (US 6269150).

Claim 1, a method for analyzing the operation of a media delivery device (Col. 2, lines 1-20), the method comprising the steps of:

determining whether a network connection is functional (by monitoring whether a service request is received from the service center 28; Col. 6, lines 1-15); determining whether a 1st diagnostic agent is functional, in response to a

determination that the network connection is functional (by detecting a service request at step 124, Col. 6, lines 17-18) ;

causing the 1st diagnostic agent to collect diagnostic data associated with the media delivery device (STB), in response to a determination that the 1st diagnostic agent is functional (gathering diagnostic information; Col. 6, lines 19-30) ;

analyzing the diagnostic data to determine an operational problem associated with the media delivery device (STB) (service center analyses the received diagnostic information; Col. 10, lines 60-63 and service technician remotely trouble-shoot and reconfigured the receiver; Col. 10, lines 35-55).

Middeke further discloses upon the diagnostic information has been transferred to the center, the service center can send commands to the receiver to reset the receiver to factory default (Col. 10, lines 35-41).

Middeke does not clearly disclose removing the 1st diagnostic agent", "uploading a second diagnostic agent to the media delivery device in response to a determination that the first diagnostic agent is not functional" and "removing the 2nd diagnostic agent"

Herrbach discloses, in similar art, that after each diagnostic process, a cleanup process is performed before another test case to run/upload (see Fig.2 , step 42; Col. 5, lines 27-58). Therefore, Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Middeke to remove the diagnostic application after each process, as taught by Herrbach so to provide a robust automated testing system as suggested (Col. 2, lines 10-48).

Claim 2, Middeke in view of Herrbach further discloses the step of uploading the first diagnostic agent to the media delivery device (STB) over an alternative network connection, in response to a determination that the network connection is not functional (reads on Middeke in which the remote technician at the remote service, i.e., workstation 30, by analyzing the diagnostic information received from the receiver, Col. 3, lines 40-Col. 15, the remote technician able to determine whether or not the network connection is functional. In view of the result, the remote technician able to reset the receiver to factory default including the first diagnostic agent that was pre-loaded by default based on the network communication status; Col. 10, lines 35-63; for example if the strength of the satellite transponder is weak, the only way to communicate between the receiver 24 and the remote service center 30 is through the communication line 32 of Fig. 1 so the technician able to troubleshoot the receiver 24).

Claim 4, Middeke further discloses the step of remedying the operational problem (Col. 10, lines 35-42).

Claim 5 , "the step of uploading a second diagnostic agent to the media delivery device, in response to a determination that the network connection is not functional" is analyzed with respect to claim 1 in which Middeke's remote technician at the remote service, i.e., workstation 30, by analyzing the diagnostic information

received fro the receiver, Col. 3, lines 40-Col. 15, the remote technician able to determine whether or not the network connection is functional. In view of the result, the Middeke's remote technician in view of Herrbach able to uploading a second diagnostic agent to the media delivery device through another communication link.

Claim 6 is analyzed with respect to claim 1.

Claim 7, Middeke further discloses wherein the performance problem is also associated with a 2nd device functionality connected to the media distribution device (Col. 3, lines 40-Col. 4, lines 15 that has plurality of status of plurality connected devices to the receiver, i.e., smartcard status.

Claim 8, Middeke further discloses the media distribution device is a STB (see Fig. 2; Col. 4, lines 15-40).

Claim 9, is analyzed with respect to claim 1.

Claim 10, Middeke further discloses wherein the intelligent diagnostic agent is executable in the system memory (Col. 6, lines 18-30).

Claim 12, "wherein the diagnostic service center can determine whether the diagnostic agent is functional" is further by Middeke' as analyzed with respect to

claim 1 in which the remote service, i.e., workstation 30, able to receive the diagnostic information from the receiver.

Claim 13, is analyzed with respect to claim 1.

Claim 14, Middeke further discloses wherein the communication link is a broadband communication (see Fig. 1).

Claim 15, Middeke in view of Herrbach does not clearly disclose the use of an ADSL as communication link.

Official Notice is taken that the use of ADSL is notoriously well known in the art for telephone companies to offer "video dial tone" over twisted pair. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Middeke in view of Herrbach to use ADSL as communication so to provide to user an alternative way to receive video at high-speed over telephone twisted pair network.

Claim 16, Middeke further discloses wherein the communication link is a satellite connection (see Fig. 1).

Claims 17-18, are analyzed with respect to claim 1.

Claim 19 is analyzed with respect to claim 2.

Claim 20, Middeke further discloses a media delivery service provider operative to transmit a media content stream to a media distribution device (see Fig. 1).

Claims 20, 21, 25, 26 are analyzed with respect to claim 1.

Claims 22 is analyzed with respect to claim 2.

Claim 24 is analyzed with respect to claim 4.

Claim 27, Middeke does not clearly disclose "prior to deleting the at least one 1st diagnostic software agent further comprising conveying at least one 2nd diagnostic software agent in response to detecting that the at least one 1st diagnostic software agent is not operational on the at least one device at the remote site."

Herrbach discloses, in similar art, prior to deleting the at least one 1st diagnostic software agent further comprising conveying at least a second diagnostic agent to the receiver in response to detecting that the at least one first diagnostic software agent is not operational (see Fig.2 , step 42; Col. 5, lines 27-58).). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Middeke diagnostic system to further uploading

2nd diagnostic agent, as taught by Herrbach so to troubleshoot or narrow down the cause of a failure.

Claims 28 and 29 are analyzed with respect to claim 2.

Claim 30, Middeke further discloses wherein the at least one 2nd communication path comprises a wireless link (Col. 3, lines 30-32).

Claim 31, Middeke further discloses wherein the wireless link comprises satellite communication (Col. 3, lines 30-32).

Claim 32, Middeke in view of Herrbach further discloses wherein code related to the at least one 1st diagnostic software agent is stored in the at least one device at the remote site for diagnostic testing and is later removed to allow more storage during an operational condition of the at least one device (see analysis of claim 1)

Claim 33, Middeke further discloses wherein the at least one first diagnostic software agent is interactive with a customer through a presentation device (Col. 4, lines 60-67+).

Claim 34, Middeke (Col. 3, lines 40-Col. 4, lines 15) in view of Herrbach further discloses the step of entering identification of the media delivery device in a service log.

Claim 35, Middeke (Col. 4, lines 48-Col. 5, lines 13) in view of Herrbach (see analysis of claim 1) further discloses wherein entering the identification of the media delivery device is performed autonomously by the diagnostic agent.

Claim 36, Middeke in view of Herrbach (Col. 3, lines 15-21) further discloses "presenting a user interface over the media presentation device; and receiving input from a user via the user interface."

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Tran whose telephone number is (571) 272-7305. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher S. Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

HT:ht
04/13/2007